

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Civil Appellate Side

Writ Petition No. 8873 of 2004

1. Mr.George P.Oomen
and another ..Petitioners

vs.

1. Mrs.Saramma Samuel
and another ..Respondents.

Mr.M.M.Vashi i/b M/s Bharat Vaishnava and Co. for
petitioners.

Ms.Sharila D'Souza i/b M/s Umesh Shetty and Co.
for respondent no.1.

CORAM:A.P.SHAH J.
21st OCTOBER, 2005

P.C.

. Heard learned counsel for respective parties.

2. The challenge is to the judgment and order passed by the School Tribunal, Mumbai directing reinstatement of the respondent with continuity of service and back wages. The respondent is a qualified teacher and has rendered more than 23 years of service in the school conducted by the petitioner society. The respondent's services were terminated after conducting enquiry against her. The only charge levelled against the respondent was that there were mistakes in assessment of some answer sheets of students of 7th standard.

Allowing the appeal of the respondent, the Tribunal has held that the action of the management was completely malafide and the charge was not established. The Tribunal also held that the enquiry was conducted in total violation of the MEPS Rules and principles of natural justice.

3. It appears that some time in the year 1998, services of the then Head Mistress Smt.Kanta Singh were terminated by the management. Thereafter the present Head Mistress namely the 2nd petitioner who happens to be the daughter of the managing trustee came to be appointed to the post of Head Mistress. The 2nd petitioner in fact was one of the juniormost amongst the teaching staff of the school. The management, however, chose to appoint petitioner no.2 claiming that it being the minority institution, rules of seniority need not be followed. It appears that some of the teachers including the present respondent have challenged the minority status of the management by filing Writ Petition No.2203 of 1999 and this writ petition is pending in this Court. It appears that the management was trying to victimise the senior staff under one pretext or other. It appears that a show cause notice was given to the respondent for the alleged mistakes in the answersheet nearly 8

months after the examination and after conducting an enquiry her services came to be terminated.

4. It is seen from the record that the charge sheet issued to the 1st respondent is absolutely vague and it does not bear the particulars of class, names of the students, roll numbers or any other details. It is not even the case of the management that the respondent had deliberately overmarked or undermarked the answerbooks. Therefore, it is difficult to appreciate how this would amount to major misconduct within the meaning of M.E.P.S. Rules and extreme penalty of dismissal could be imposed. More over it is seen that the enquiry was conducted in total violation of MEPS Rules. Rule 36(2)(a) of the MEPS rules provides that the enquiry committee shall consist of the nominee of the management, nominee of the employee and one person chosen from the panel of teachers on whom State/National award has been conferred. In the instant case, however, in addition to these 3 members, 2nd petitioner was appointed as a member of the enquiry committee. The 1st respondent specifically objected to the appointment of 2nd petitioner alleging bias but her objection was turned down. What is most shocking is that the 2nd petitioner who acted as a member of the enquiry

committee also deposed as a witness for the management.

5. On going through the entire records I am satisfied that this is a clear case of victimisation and the Tribunal has rightly directed reinstatement with back wages. The petition is dismissed. The Management is directed to reinstate the 1st respondent forthwith and pay to her backwages as per the order of the Tribunal within a period of six weeks from today.